IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1316 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

GUNVANTLAL SHANKARLAL THAKKER (H/O LATE INDUBEN GUNVANTLAL)

Appearance:
MRS VASAVDATTA BHATT for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE J.R.VORA

Date of decision: 23/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. Heard learned Advocate Ms. Vasavdatta Bhatt for the appellant and learned Advocate Mr. Suresh M. Shah

appearing on caveat for respondents nos. 1,2 and 3.

2. Admit.

3. Learned Advocate Shri. Suresh M. Shah waives service on behalf of respondents nos. 1,2 and 3. Learned Advocate Ms. Vasavdatta Bhatt seeks permission to delete respondents nos. 4 to 7 in the present proceedings. Respondents nos. 4 to 7 are permitted to be deleted, so far as the present proceedings are concerned.

4. The facts giving rise to the present First Appeal in a nut-shell are as under:-

4.1. Respondents nos. 1,2 and 3 are claimants in Motor Accident Claim Petition No. 1/98. The said petition has been filed by the claimants as Smt. Induben Gunvantlal expired on 26th September, 1997 in a motor accident. At the time of the incident, the deceased was travelling in a bus, belonging to the appellant's Corporation. In the said claim petition an application below Exh. 18 was filed by the claimants under the provision of Section 163 (A) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") On the said application the award was passed on 1st August, 2000 by the Motor Accident Claims Tribunal, Kachchh at Bhuj whereby a sum of Rs. 50,900/has been awarded to the claimants alongwith interest from the date of the application till the date of deposit of the said amount with the Tribunal. Being aggrieved by the said award, the appellant has filed this First Appeal.

5. Learned Advocate Ms. Bhatt appearing for the appellant has submitted that the amount awarded by the Tribunal is on the higher side because sufficient evidence was not led by the claimants for establishing the income of the deceased. It has been further submitted by her that the application filed for compensation under Section 166 of the Act is still pending. There are all chances that the claimants might withdraw the said application if they feel that they are likely to get lesser amount than the amount awarded under the impugned award. If such a thing happens, it would be difficult for the appellant to recover the amount which might have been withdrawn by the claimants under the award.

6. On the other hand, learned Advocate Mr. Shah appearing for the original claimants has submitted that the amount awarded is not on the higher side. As a

matter of fact, more amount is likely to be awarded to the claimants in the application filed under the provisions of Section 166 of the Act. It has been submitted by him that the claimants do not propose to withdraw the proceedings initiated by them under the provision of Section 166 of the Act. It has been further submitted by him that respondent no. 1, for herself and on behalf of two minor children, is ready and willing to give an undertaking to the Tribunal that the proceedings filed under the provision of Section 166 of the Act shall not be withdrawn or shall not be permitted to be dismissed for default. In such an event, there would not be any possibility of bringing an end to the proceedings initiated under the provision of Section 166 of the Act. It has also been submitted by him that at present the Tribunal has permitted the claimants to withdraw only 40% of the amount awarded and therefore also, there is no possibility of the appellants being put to difficulty at this stage.

7. We have heard the learned Advocates and on perusal of the impugned award, we are of the view that this appeal may be disposed of, if respondent no. 1, that is claimant no. 1 files an undertaking before the Tribunal on her behalf as well as on behalf of two minor children, that he shall not withdraw the proceedings initiated under Section 166 of the Act and that he shall not permit the said proceedings to be dismissed for default.

8. The learned Advocates appearing for the parties have also assured this Court that the litigants would extend their cooperation to the Tribunal for speedy disposal of the application which is pending before the Tribunal. In the circumstances, it is directed that an undertaking shall be filed by respondent no. 1 for himself and on behalf of his minor children that the proceedings filed under Section 166 of the Act shall neither be withdrawn nor be permitted to be dismissed for default. Such an undertaking shall be filed within four weeks from today.

9. The appellants shall deposit the entire amount with the Tribunal within six weeks from today. Out of the amount deposited, 40% of the amount shall be paid to the claimants in the proportion suggested by the Tribunal by Account Payee Cheques and 60% shall be deposited with a Nationalised Bank for a period of 5 years. Interest which might accrue on the deposit shall be reinvested.

10. In view of the above order, the Appeal is finally

disposed of with no order as to costs.

(A.R. DAVE,J.)

(J.R. VORA,J.)

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